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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JAVANCE PAYNE,

12 Plaintiff,

13 v.

14 C. BASER, et al.,

15 Defendants.  
16

No. 2: 20-cv-0553 KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding without counsel. Plaintiff seeks relief pursuant to  
18 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C.  
19 § 1915. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local  
20 Rule 302.

21 Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).  
22 Accordingly, the request to proceed in forma pauperis is granted.

23 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C.  
24 §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in  
25 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct  
26 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
27 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly  
28 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust

1 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court  
2 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
3 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
7 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
16 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
17 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
18 1227.

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
20 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
22 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
23 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
24 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
25 sufficient "to raise a right to relief above the speculative level." Id. However, "[s]pecific facts  
26 are not necessary; the statement [of facts] need only 'give the defendant fair notice of what the . .  
27 . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93 (2007)  
28 (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal quotations marks omitted).

1 In reviewing a complaint under this standard, the court must accept as true the allegations of the  
2 complaint in question, id., and construe the pleading in the light most favorable to the plaintiff.  
3 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468  
4 U.S. 183 (1984).

5 Named as defendants are Correctional Officers Baser and Crisanto. Plaintiff has stated a  
6 potentially colorable Eighth Amendment claim against both defendants.

7 Plaintiff also alleges that defendants filed a false disciplinary report against him in  
8 violation of his right to equal protection and due process. However, a “complaint alleging that an  
9 officer filed a false report, by itself, fails to state a claim upon which relief can be granted.” Koch  
10 v. Austin, 2006 WL 403818, at \*5 (E.D. Cal. Feb. 16, 2006), adopted by 2006 WL 842585 (Mar.  
11 28, 2006). A cognizable claim is stated only if there is evidence that the false report was  
12 retaliatory, or the inmate is not afforded procedural due process in the hearing on the disciplinary  
13 charge. See Freeman v. Rideout, 808 F.2d 949, 953 (2d Cir. 1986) (guards’ “filing of unfounded  
14 charges did not give rise to a per se constitutional violation actionable under section 1983”);  
15 Sprouse v. Babcock, 870 F.2d 450, 452 (9th Cir. 1989) (claim based on falsity of charges,  
16 standing alone, did not state a constitutional claim); Hanrahan v. Lane, 747 F.2d 1137, 1140-41  
17 (7th Cir. 1984) (guards’ fabrication of evidence does not state a claim if procedural protections  
18 are provided during disciplinary hearing).

19 Although it does not appear that plaintiff can cure the pleading defects regarding his claim  
20 alleging that defendants filed false disciplinary charges, this claim is dismissed with leave to  
21 amend.

22 Plaintiff may proceed forthwith to serve defendants as to the Eighth Amendment claim  
23 and pursue only that claim, or he may delay serving any defendant and file an amended  
24 complaint.

25 If plaintiff elects to attempt to amend his complaint, he has thirty days in which to do so.  
26 He is not obligated to amend his complaint.

27 If plaintiff elects to proceed forthwith against defendants as to his potentially colorable  
28 Eighth Amendment claim, then the court will order service of defendants as to the Eighth

1 Amendment claim. In this event the court will construe plaintiff's election as consent to  
2 dismissal of his claim alleging that defendants filed disciplinary charges without prejudice.

3 Plaintiff is advised that in an amended complaint he must clearly identify each defendant  
4 and the action that defendant took that violated his constitutional rights. The court is not required  
5 to review exhibits to determine what plaintiff's charging allegations are as to each named  
6 defendant. The charging allegations must be set forth in the amended complaint so defendants  
7 have fair notice of the claims plaintiff is presenting.

8 Any amended complaint must show the federal court has jurisdiction, the action is brought  
9 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must  
10 contain a request for particular relief. Plaintiff must identify as a defendant only persons who  
11 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.  
12 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation  
13 of a constitutional right if he does an act, participates in another's act or omits to perform an act  
14 he is legally required to do that causes the alleged deprivation). If plaintiff contends he was the  
15 victim of a conspiracy, he must identify the participants and allege their agreement to deprive him  
16 of a specific federal constitutional right.

17 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.  
18 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.  
19 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
20 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

21 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
22 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any  
23 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
24 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be  
25 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
26 N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system,  
27 which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8. Plaintiff must  
28 not include any preambles, introductions, argument, speeches, explanations, stories, griping,

1 vouching, evidence, attempts to negate possible defenses, summaries, and the like. McHenry v.  
2 Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming dismissal of § 1983 complaint for  
3 violation of Rule 8 after warning); see Crawford-El v. Britton, 523 U.S. 574, 597 (1998)  
4 (reiterating that “firm application of the Federal Rules of Civil Procedure is fully warranted” in  
5 prisoner cases). The court (and defendant) should be able to read and understand plaintiff’s  
6 pleading within minutes. McHenry, 84 F.3d at 1179-80. A long, rambling pleading including  
7 many defendants with unexplained, tenuous or implausible connection to the alleged  
8 constitutional injury, or joining a series of unrelated claims against many defendants, very likely  
9 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing plaintiff’s  
10 action pursuant to Fed. R. Civ. P. 41 for violation of these instructions.

11 A district court must construe a pro se pleading “liberally” to determine if it states a claim  
12 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an  
13 opportunity to cure them. See Lopez, 203 F.3d at 1130-31. While detailed factual allegations are  
14 not required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
15 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
16 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
17 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft, 556  
18 U.S. at 678 (quoting Bell Atlantic Corp., 550 U.S. at 570).

19 A claim has facial plausibility when the plaintiff pleads factual  
20 content that allows the court to draw the reasonable inference that the  
21 defendant is liable for the misconduct alleged. The plausibility  
22 standard is not akin to a “probability requirement,” but it asks for  
23 more than a sheer possibility that a defendant has acted unlawfully.  
Where a complaint pleads facts that are merely consistent with a  
defendant’s liability, it stops short of the line between possibility and  
plausibility of entitlement to relief.

24 Ashcroft, 556 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions  
25 can provide the framework of a complaint, they must be supported by factual allegations, and are  
26 not entitled to the assumption of truth. Id. at 1950.

27 An amended complaint must be complete in itself without reference to any prior pleading.  
28 Local Rule 220; See Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015)

1 (“an ‘amended complaint supersedes the original, the latter being treated thereafter as non-  
2 existent.’” (internal citation omitted)). Once plaintiff files an amended complaint, the original  
3 pleading is superseded.

4 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and  
5 has evidentiary support for his allegations, and for violation of this rule the court may impose  
6 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

7 A prisoner may bring no § 1983 action until he has exhausted such administrative  
8 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. Booth v.  
9 Churner, 532 U.S. 731, 741 (2001). California prisoners or parolees may appeal “departmental  
10 policies, decisions, actions, conditions, or omissions that have a material adverse effect on the[ir]  
11 welfare. . . .” Cal. Code Regs. tit. 15, §§ 3084.1, et seq. An appeal must be presented on a CDC  
12 form 602 that asks simply that the prisoner “describe the problem” and “action requested.”  
13 Therefore, this court ordinarily will review only claims against prison officials within the scope of  
14 the problem reported in a CDC form 602 or an interview or claims that were or should have been  
15 uncovered in the review promised by the department.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.

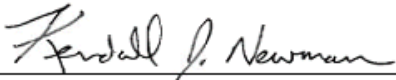
18 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
19 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
20 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the  
21 Director of the California Department of Corrections and Rehabilitation filed concurrently  
22 herewith.

23 3. Plaintiff’s claim alleging that defendants filed false disciplinary charges is dismissed  
24 with leave to amend. Within thirty days of service of this order, plaintiff may file an amended  
25 complaint.

26 4. Plaintiff has stated a potentially colorable Eighth Amendment claim against  
27 defendants. See 28 U.S.C. § 1915A. If plaintiff opts to proceed on his original complaint as to  
28 these defendants, he shall return the attached notice within thirty days of service of this order.

1           5. Failure to comply with this order will result in a recommendation that this action be  
2 dismissed.

3 Dated: March 19, 2020

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5 KENDALL J. NEWMAN  
6 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAVANCE PAYNE,

No. 2:20-cv-0553 KJN P

Plaintiff,

V.

C. BASER, et al.,

Defendants.

## NOTICE

\_\_\_\_\_ Plaintiff opts to proceed with the original complaint as to his Eighth Amendment claim against defendants Baser and Crisanto. Plaintiff consents to the dismissal of his claim alleging that defendants Baser and Crisanto violated plaintiff's constitutional rights by filing a false disciplinary report without prejudice.

OR

\_\_\_\_\_ Plaintiff opts to file an amended complaint and delay service of process.

DATED:

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Plaintiff